

**VIRGINIA DEPARTMENT OF ENERGY
MINED LAND REPRUPOSING**

GUIDANCE MEMORANDUM¹ No. 23-08

Issue Date: March 17, 2008

**Subject: Revisions: Insignificant vs. Significant; Acreage Amendments; and
Incidental Boundary**

The Virginia Department of Energy, Mined Land Repurposing (MLR) program is replacing **MLR Memoranda to Operators Nos. 1-87** and **5-98** with this guidance memorandum by consolidating the information of the aforementioned memoranda.

Significant and Insignificant Revisions

As set forth in the Memorandum of January 14, 1987 (1-87), the following criteria will be used to determine whether a revision application should be classified as significant or insignificant (§4VAC25-130-774.13).

Significant Revisions	Minor (Insignificant) Revision
(Any one of the following would generally cause the revision to be considered significant .)	(Where none of the conditions listed in Significant Revisions exists and any of the following are the sole purpose of the proposed revision.)
1. Change to issue that was subject to public controversy or citizen/agency objections	Post mining land use changes ² that do not involve industrialization/commercialization (of areas not previously approved for such).
2. Potential for adverse impacts upon individuals or their rights	Change in ownership where name and address of the permittee does not change.
3. Change from non-industrial/commercial to industrial/commercial land use.	Deletion of undisturbed areas
4. Increase in area above PMU where buildings/renewable resources may be adversely impacted	Change in coal removal method provided no additional adverse impacts will occur.
5. Addition of permanent coal	Expanding/increasing coal amount

¹ This Memorandum is to be considered a guideline issued under the authority of § 45.1-230.A1 of the Code of Virginia which reads:

“In addition to the adoption of regulations under this chapter, the Director may at his discretion issue or distribute to the public interpretative, advisory or procedural bulletins or guidelines pertaining to permit applications or to matters reasonably related thereto without following any of the procedures set forth in the Administrative Process Act (§ 2.2-4000 et seq.). The materials shall be clearly designated as to their nature, shall be solely for purposes of public information and education, and shall not have the force of regulations under this chapter or under any other provision of this Code.”

² Including gas well and lines permitted by the Virginia Gas and Oil.

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Significant Revisions		Minor (Insignificant) Revision
processing facility or washing facility (with NPDES discharge(s)) where none approved in original permit.		removed from seams or locations within permit provided adverse environmental impacts do not increase in magnitude or in time.
6. Addition of coal processing waste disposal area (other than insignificant amounts)		Redesign/relocation of drainage control structures – applicant shows perennial streams won't be affected.
7. Changes that could impact surface/ground water quality/quantity. Changes in findings of PHC or CHIA		Change in mining cut/sequence
8. Change from surface to underground mining operations, from room & pillar to longwall, or addition of underground entries to surface operation		Revisions to comply with remining regulations by using all available materials for partial highwall backfilling
9. Changes to operations/reclamation plans that may have adverse impacts not considered in original permit approval.		Addition of an entry/ventilation shaft to underground mine, provided no additional adverse impacts will result.
10. Retention of impoundment as permanent.		
11. Diverting perennial stream(s), unless can demonstrate no significant impact upon PHC or fish/wildlife.		
12. Addition of NPDES discharge point(s) if significant to PHC (requires public participation under Clean Water Act).		

Acreage Amendments

Consistent with 4 VAC 25-130-774.13(d), any request for a non-incidental extension to the area covered by an existing permit shall be made by application for a new permit (forms – **DMLR-PT-034e, DMLR-PT-034p, & DMLR-PT-034o**).

The Permittee may use one of the following to add **non-incidental acreage**. The application may:

1. Be for a completely new permit for the proposed area (new permit number would be issued).
2. Add the proposed acreage to the existing permit (permit number would remain the same, with the same anniversary and expiration dates). The application can reference applicable portions of the approved permit plans (with copies of the relevant sections

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included); however, it must provide all the information required for approval of a new permit for the proposed additional area. If the additional area affects any portions of the existing permit plans, those portions must also be updated and included with the application package.

Should MLR find that the new area is not a functional extension of the existing permit, but rather a separate operation, the MLR may require an application for a separate permit.

Incidental Boundary Revisions (IBR)

4 VAC 25-130-774.13(d)

Include only minor changes to permit boundaries that are incidental³ to the approved operations (i.e., road alignment, drainage alignment, parking areas, additional entries/punch outs for underground operations, or other non-coal removal functions necessary for the orderly and continuous conduct of the approved operation).

- Proposal to increase area available for coal removal will not be accepted as an IBR unless the coal removal is incidental to the primary purpose of the revision.
- MLR may approve *small adjustments*⁴ to permit boundary as an IBR when there is no net increase in the permitted area.

If you have any questions concerning this guidance memorandum, please contact the MLR's Manager at 276-523-8100 or the Technical Services Manager at 276-523-8100.

³ An incidental boundary revision may be approved to allow coal removal as long as there is no net increase in permit acreage and does not exceed a 5 acres deletion/addition of coal removal acres.

⁴ The addition of 5 acres is the maximum amount that may be allowed during the life of the permit. The addition will be considered as an acreage amendment.